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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,678	01/12/2006	Mark Richard Jones	1263-001	8316
25215	7590	12/11/2006	EXAMINER	
DOBRUSIN & THENNISCH PC 29 W LAWRENCE ST SUITE 210 PONTIAC, MI 48326			HARTMANN, GARY S	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/524,678	JONES, MARK RICHARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary Hartmann	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/2/5</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claim 26 must be shown or the features canceled from the claim. Specifically, the drawings only show portions of the equipment recited in parent claim 21 attached to a dipper arm or front loader. Also, note the rejection under 112 2<sup>nd</sup> paragraph, below. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The abstract of the disclosure is objected to because it is directed to attachments of infrared heaters only, rather than the combination with the means for storing and supplying asphalt and liquid, as required in the present application. The abstract should also be amended such that it is directed to the elected apparatus and not the method. Correction is required. See MPEP § 608.01(b).

The specification is objected to because it does not contain section headings; e.g., "Background of the Invention," "Detailed Description," etc. Correction is required.

The specification contains the trademark/trade name Fecralloy®, but does not provide a description of the material. Every recitation of the trademark must be in all capital letters (i.e., --FECRALLOY®-- ) and include an appropriate description of the material. Also note the 112 2<sup>nd</sup> rejection below.

### ***Claim Objections***

Claims 25, 27 and 29 are objected to because "the truck," "the raked area" and "the heater blanket" in claims 25, 27 and 29, respectively, lack proper antecedent basis. Appropriate correction is required.

Claim 26 is objected to because the term "it" (line 4) must be replaced by a positive recitation of a specific part due to the equivocal nature of the term. Appropriate correction is required.

While not objected to, it is noted that the limitations which follow recitations of "optionally" in claims 21, 22 and 28 need not be considered in claim rejections, since these

limitations, being optional, are not positively recited. Note that this limitation is rejected under 112 2<sup>nd</sup> in claim 26, for the reasons discussed below.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22, 26, 27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22, 26 and 27 positively recite the vehicle. These recitations lack proper antecedent basis because the parent claim uses the phrase "single vehicle" as an adjective only to describe the repair system; i.e., the invention is directed to the subcombination of the equipment, not to the vehicle. Inclusion of the vehicle in the dependent claims is indefinite because it is unclear whether the invention is directed to the subcombination recited in parent claim 21 or to a combination of a vehicle and equipment. Further with respect to claim 26, the term "optionally" renders the claim indefinite because it is unclear whether all of the limitations which follow are optional, or if the attachment is mandatory but only the dipper arm and front loader are optional.

The recitations in parentheses "()" in claim 26 are indefinite because it is unclear whether or not these are part of the claimed invention.

Claim 29 contains the trademark/trade name Fecralloy®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte*

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*Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe metal produced from alloys of iron, chromium, aluminum and yttrium and, accordingly, the identification/description is indefinite. Also note the objection to the specification, above.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 23 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cutler (U.S. Patent 4,534,674).

Cutler discloses equipment for the repair of asphalt surfaces including a single vehicle road repair system (abstract and Figure 1, for example). There are means for storage (25) and supply of gas for heating (20, 60). Because the gas is propane, the recitation of means for supplying infrared heat is met, as burning propane inherently produces infrared heat. There are means for storing and supplying (14) new asphalt and rejuvenation liquid (102, 103).

Regarding claim 23, there are no recitations which distinguish the hopper (14) from a hot box.

Regarding claim 28, a control is inherent since the heaters would otherwise be uncontrollable. Note the discussion with respect to the limitations which follow "optionally" in the claim objection section, above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutler, as applied above.

Regarding claim 24, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a tow bar in order to attach additional devices as deemed necessary for a particular application.

Regarding claim 29, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this material in order to best suit a particular application.

Claims 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver (U.S. Patent 3,625,489).

Weaver discloses equipment for the repair of asphalt surfaces including a single vehicle road repair system (abstract and Figure 1, for example). There are means for storage (Figures 1

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and 2) and supply (230, for example) of gas for heating. Because the gas is butane and the hood is designed to reflect heat, the recitation of means for supplying infrared heat is met. There are means for storing and supplying (274) new asphalt. Means for storing and supplying a rejuvenation liquid are not disclosed; however, it is well known to use rejuvenation liquid in asphalt surface repair in order to obtain a desired finished product. For this reason, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included these means with Weaver.

The vehicle is a truck.

The means for storage is a hot box.

While Weaver does not specify a tow bar, it is common to include tow bars on trucks in order to transport additional devices as needed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a tow bar with Weaver.

The heating system is hinged so that it may be folded against the back of the truck.

Regarding claim 26, it is well known to make road repair systems portable from manually propelled devices to enormous machines, depending upon the application. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the equipment of Weaver with a backhoe or skid-steer in order to repair or construct a small or difficult-to-access area.

The configuration of claim 27 is disclosed by Weaver.

A heater control system is inherent.



Regarding claim 29, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this material in order to best suit a particular application.

Claims 21-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Harvey (6,619,881).

Harvey discloses equipment for the repair of asphalt surfaces including a single vehicle road repair system (abstract and Figure 2, for example). There are means for storing and supplying (30) new asphalt and liquid (Figures 10 and 11, for example). Surface heating means are optional. Infrared heating is well known in pavement repair systems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an infrared heating means in order to best suit a particular application. Given this infrared heating system, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a means for storage and supply of gas for heating in order to operate the heater.

The vehicle of Harvey meets the broad recitation of a truck.

There is a hot box.

There is a tow bar.

It is well known to hinge heaters in order to facilitate transportation. For this reason, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have hinged the heater of Harvey.

The vehicle is a skid-steer.

Regarding claim 27, the structure is shown at the front of the vehicle; however, there is nothing which prevents the structure from being attached to the rear of the vehicle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the attachment at the rear of the vehicle in order to, for example, improve visibility for a driver of the vehicle.

Given the heater, a control would have been necessary in order to properly operate the device.

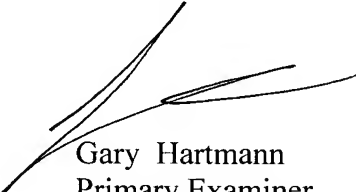
Regarding claim 29, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this material in order to best suit a particular application.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Tuesday through Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gary Hartmann  
Primary Examiner  
Art Unit 3671

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